IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Crl.Rev.Pet.No. 2736 of 2007()

CMP.21/2002 of SUB DIVISIONAL MAGISTRATE, TIRUR

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REVN. PETITIONER: TENANT

PADINJARE PEDIAKKAL HAMSA,
S/O. AHAMMEDKUTTY, M.M. COMPLEX,
CHEMMAD, TIRURANGADI.

BY ADV. SRI.T.KRISHNAN UNNI
SRIC.M.MOHAMMED IQUABAL

RESPONDENTS: PETITIONER & RESPONDENTS

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1. M.N.KUNHARAMUTTY HAJI,
S/O.MOIDEENKUTTY HAJI,
MUTHUVAL NALAKATH,TIRURANGADI,
MALAPPURAM DISTRICT.

2. PRABHAKARAN,S/O.KARAPPAN,
NATIONAL INDUSTRIES, CHEMMAD,
DO..DO..

3. AZEEZ, RAINBOW FOOTWEAR,
DO..DO..

4. HUSSAIN, SHALIMAR STORE,
DO.....DO.....

5. PRABHEESH, S/O.PRABHAKARAN,
TRY STAR METAL INDUSTRIES,
DO...DO...

6. K. SURESAN, KAIRALI BANGLE CUTTING,
DO..DO...

7. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.K.RAMACHANDRAN
SMT.R.MEERA
SRI.K.P.MUJEEB
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2736 OF 2007 B

Dated this the 1st day of October, 2007

O R D E R

The revision petitioner(P.P.Hamsa) is the tenant of a building situated on the eastern side of the road in a property comprised in R.S.No.322/05 of Thirurangadi village. The landlord in respect of the said building is one M.N.Kunharamutty Haji. As per a petition filed by respondents 2 to 6 herein before the Sub Divisional Magistrate, Tirur presumably under section 133 Cr.P.C. against the said M.N.Kunharamutty Haji the applicants alleged that the said building was in such a condition that it was likely to fall and thereby cause injury to persons living or carrying on business or passing by in the neighbourhood. As per the order under section 133(1)(d) Cr.P.C. dated 29.5.02 the Sub Divisional Magistrate passed a conditional order directing the said M.N.Kunharamutty Haji to demolish the tiled portion of the said old building on or before 26.6.02 or to show cause why the said order should not be enforced. The original files disclose that subsequently as per the order dated 2.11.02 the Sub Divisional Magistrate made the conditional order absolute. In the said order

it is recited as follows:-

> *"On 17.7.02 the counter petitioner(i.e., M.N.Kunharamutty Haji) present and admitted that the said building is in a dangerous condition as mentioned in the conditional order."*

2. Thereafter the Sub Divisional Magistrate passed the impugned order in purported exercise of his power under section 141 Cr.P.C. Initially the order under section 141 Cr.P.C. was passed against the said M.N.Kunharamutty Haji, alleging that he disobeyed in implementing the final order for demolishing the building. A similar order was then issued to the village officer concerned. Subsequently, the Sub Divisional Magistrate passed the impugned order dated 17.7.06 against the revision petitioner under section 141 Cr.P.C. directing demolition of the building stating that the final order passed under section 138 is to be implemented.

3. Sri.K.Ramachandran, the learned counsel appearing for the 1st respondent submitted that the revision petitioner having not challenged the final order cannot take exception to the order under section 141 Cr.P.C. He also submitted that the revision

petitioner who had challenged the impugned order by filing a writ petition got it dismissed for non-prosecution. Counsel for respondents 2 to 6 also raised similar conditions.

4. I am afraid that I cannot agree with the contentions raised by respondents 1 to 6. Under the scheme of Chapter XB Cr.P.C. where the proceedings have been initiated under section 133 Cr.P.C. resulting in a final order under section 138 Cr.P.C. an order under section 141 Cr.P.C. consequent on disobedience of the final order under section 138 Cr.P.C. can be passed only against a person against whom the final order under section 138 Cr.P.C. was passed. The revision petitioner who is the tenant in actual possession of the building in question was not a party to the earlier proceedings culminating in the passing of the final order under section 138 Cr.P.C. Moreover, where proceedings under section 133(1)(d) Cr.P.C. in respect of a building has been initiated, the conditional order which can be passed thereunder is to remove, repair or support such building and the person against whom such direction can be passed is the person owning, possessing or controlling such building. While in the case of M.N.Kunharamutty Haji, it can be said that he is the owner of the

building, the revision petitioner who was in possession of the building was also a necessary party since no order can be effectively passed in such proceedings without giving notice to the revision petitioner who is the occupant of the building. At any rate, the order passed against the landlord cannot be enforced against the tenant by initiating proceedings under section 141 Cr.P.C. The revision petitioner has a contention that the entire proceedings initiated under section 133 Cr.PC. was a collusive proceedings between the applicants therein shown as the A party and the landlord shown as the B party. The learned counsel for the revision petitioner also submits that on the revision petitioner moving the Accommodation Controller stating that the building is in disrepair the Accommodation Controller has passed an order directing the landlord to effect repairs. This according to the revision petitioner will show that the building is not in such a dangerous condition as to warrant demolition and that the building can be made habitable by effecting the necessary repairs. Such being the position, the impugned order under section 141 Cr.P.C. cannot operate against the revision petitioner unless the final order under section 138 Cr.P.C. has been passed in proceedings

in which the revision petitioner was also a party. This revision is accordingly allowed and the direction in the 141 proceedings so far as it affects rights of the revision petitioner shall not be implemented without serving a final order against the revision petitioner under section 138 Cr.P.C.

(V. RAMKUMAR, JUDGE)

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